IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

TUESDAY, THE 23RD JANUARY 2007 / 3RD MAGHA 1928

WP(C).No. 14663 of 2006(U)

PETITIONER:

P.C.NARAYANAN, H.S.A.(MUSIC),
KUTTUMBOOR HIGH SCHOOL,
KUTTUMBOOR, QUILANDY, KOZHIKODE.

BY ADV. SRI.SUDHEESH.A.
SMT.C.V.BINDU

RESPONDENTS:

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1. STATE OF KERALA,
REP. BY THE SECRETARY TO GOVERNMENT GENERAL EDUCATION DEPARTMENT,
THIRUVANANTHAPURAM.

2. DISTRICT EDUCATIONAL OFFICER,
VADAKARA.

3. THE MANAGER,
KUTTUMBOOR HIGH SCHOOL,
KUTTUMBOOR, QUILANDY,
KOZHIKODE.

BY GOVERNMENT PLEADER SRI. T.T.MUHAMMOOD

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 23/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) NO: 14663/2006 U

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE ORDER IN CMP NO. 18932/92 IN OP NO. 8822/92 DT. 1/09/92.

EXT.P2. COPY OF THE JUDGMENT OF OP NO. 8822/92 DT. 21/7/00.

EXT.P3. COPY OF THE ORDER DT. 20/2/2003 BY R2.

EXT.P4. COPY OF THE ORDER OF THE R1 DT. 10/07/2003.

EXT.P5. COPY OF THE GOVERNENT ORDER DT. 23/12/2004.

EXT.P6. COPY OF THE GOVERNENT ORDER DT. 27/07/2004.

K. M. JOSEPH, J.

W.P.C. NO. 14663 OF 2006 U

Dated this the 23rd January, 2007

JUDGMENT

Case of petitioner, in brief, is as follows:

Petitioner was appointed as HSA (Music) with effect from 1.6.1992. Approval was not granted. Petitioner approached this Court. By an interim order, this Court directed to provisionally approve his appointment and to grant salary for the period he had worked as HSA subject to the result of the Original Petition. By Exts.P2, a Division Bench disposed of the Original Petition. This Court noted that the petitioner is continuing and receiving salary. Petitioner's submission that in view of the subsequent Rules and present situation he is entitled to get approval, was noted. A final decision was directed to be taken. It was also ordered that the interim order passed will continue till orders are passed by Government. Case of petitioner is that the order produced as Ext.P4 which is dated 10.7.2003 was passed by Government after considerable delay. By Ext.P4, Government

noted that a post of Music Teacher was sanctioned and it was not approved on the basis that the Kuttamboor High School is a newly opened School. Thereafter, taking note of the staff fixation for 2002 - 2003 it was found that there is no scope for appointing a second specialist teacher and as the petitioner's appointment was not regularised, he is not entitled to the benefit of protection as per G.O. dated 26.7.1999. Petitioner has produced Ext.P5 order dated 23.12.2004 and Ext.P6 dated 27.7.2004. According to petitioner, Ext.P5 would show that Government has considered the issue regarding some other teachers in the very same School and regularised the service of those teachers who have entered service in 1989 - 1990 and benefits were extended to them. It is also pointed out that by Ext.P6, the two junior teachers were regularised and benefits extended to them. Apparently, these orders were not available when the impugned order Ext.P4 was passed. Petitioner also relies on Ext.P7 order dated 1.2.2006 as per which if one protected teacher has been appointed, the Rule has

been relaxed, according to petitioner. In such circumstances, I feel that the matter should be considered afresh and it should be considered as to whether the petitioner is entitled to approval of the original appointment and also whether he is, at any rate, entitled to the benefit of Ext.P7 order dated 1.2.2006. Counsel for petitioner points out that contrary to Ext.P2 Judgment, petitioner was paid salary only upto 1.1.2003 and he would point out that going by Ext.P2 Judgment, petitioner is entitled to the benefit of Ext.P1 interim order and consequential salary for the period he worked, at least, till the date of the order which is 10.7.2003. In fact, counsel for petitioner would submit that petitioner having worked, he should be paid salary for the entire period he had worked and also he can be regularised in terms of Ext.P7. As far as the complaint of petitioner that Ext.P2 judgment directing that Ext.P1 order will continue, is not observed in so far as salary is paid only till 1.1.2003 is concerned, I feel that petitioner should be paid salary in terms of

Ext.P2 Judgment read with Ext.P1, till the date of Ext.P4 which is dated 10.7.2003. Accordingly, there will be a direction to second respondent to countersign the bill for payment of salary for the period from 1.1.2003 to 9.7.2003 upon the same being presented by the competent authority in the School within a period of two weeks from the salary bill being presented for the said period, and the amounts shall be paid without any further delay. Ext.P4 is quashed and there will be a direction to first respondent to consider whether petitioner is entitled to approval of the appointment made on 9.10.1991 in accordance with law and in the light of Exts.P5 and P6. It is for the Government to decide the matter having regard to the facts involved and the legal position. In case, it is found that petitioner is entitled to approval, the monetary benefits due for the remaining period shall be paid without any delay. There will be a further direction to consider whether petitioner is, at any rate, entitled to

the benefit of Ext.P7 G.O. A decision will be taken in the matter in accordance with law, within a period of two months from the date of receipt of a copy of this Judgment.

The Writ Petition is disposed of as above.

K. M. JOSEPH, JUDGE

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